

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

17 CR 417 (AKH)

5 ALI KOURANI,

Conference

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 28, 2018
10:41 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN

12 District Judge

13
14
15
16 APPEARANCES

17 GEOFFREY S. BERMAN

18 Interim United States Attorney for the
19 Southern District of New York

20 AMANDA L. HOULE

EMIL J. BOVE III

Assistant United States Attorneys

21 ALEXEI SCHACHT

22 Attorney for Defendant

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Kourani - cross

1 (Case called)

2 THE COURT: Good morning, all. Be seated.

3 Come on up here, Mr. Kourani.

4 ALI KOURANI, resumed.

5 THE WITNESS: Good morning.

6 THE COURT: Good morning, Mr. Kourani. Please be
7 seated. I remind you that you remain under oath. I think
8 we're about to continue the cross-examination, right?

9 MS. HOULE: Yes, your Honor. Just one point before we
10 begin. I appreciate your Honor's comments yesterday about
11 getting to the point and focusing the scope of the
12 cross-examination. And we understand that the heart of the
13 issue here is whether or not immunity was offered or promised
14 to the defendant. But the government believes that there are
15 certain things that Mr. Kourani said in his declaration and on
16 direct examination that are not true. And so we'd like the
17 opportunity to confront him about those things, as your Honor
18 is assessing --

19 THE COURT: Go ahead, Ms. Houle.

20 MS. HOULE: Thank you, your Honor.

21 THE COURT: I will try not to interrupt you.

22 CROSS-EXAMINATION CONTINUED

23 BY MS. HOULE:

24 Q. Good morning, Mr. Kourani.

25 A. Good morning.

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Kourani - cross

1 MS. HOULE: Mr. DeLuca, could you please bring up
2 Government Exhibit 701.

3 There's also a binder in front of you, Mr. Kourani, if
4 you prefer to look at the hard copy, which is the tab labeled
5 701.

6 May I approach, your Honor?

7 THE COURT: You may.

8 Don't ask me to approach. Just approach.

9 Q. That is a declaration that you signed, Mr. Kourani; is that
10 correct?

11 A. Yeah, that's correct.

12 MS. HOULE: Your Honor, the government moves to admit
13 701.

14 MR. SCHACHT: No objection.

15 THE COURT: No point. Are you doing this for
16 impeachment? Impeach however you want. We don't need this
17 document into evidence.

18 Q. Mr. Kourani, you understood that you signed this document
19 under penalty of perjury, right?

20 A. Yeah. I did understand that.

21 Q. Which means that you needed to tell the truth?

22 A. Definitely.

23 Q. And you say in the start of this document that your lawyer
24 drafted it for you, right?

25 A. He helped me out with it.

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Kourani - cross

1 Q. But you reviewed it before you signed it, right?

2 A. Exactly.

3 Q. And you made sure that everything in it was the truth,
4 right?

5 A. As the best of my knowledge.

6 Q. Well there are things in here that you know are not true,
7 right?

8 A. No.

9 Q. Things that you left out to mislead the Court, right?

10 A. I have never attempted to mislead the Court.

11 Q. Let's talk about --

12 A. But you know when I wrote that -- when I wrote that thing I
13 didn't mention everything.

14 Q. Right. There are things that you left out on purpose?

15 A. Not on purpose.

16 MR. SCHACHT: Object.

17 THE COURT: Sustained.

18 Q. Let's talk about --

19 THE COURT: What are you complaining about,
20 Mr. Schacht. All you do is stand up and say I object.

21 MR. SCHACHT: Thank you.

22 THE COURT: Sustained.

23 Q. Let's look at paragraph eight. You talk here about the
24 trip that you took with your family in July of 2016 to Lebanon,
25 right?

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Kourani - cross

1 A. Yeah. That's right.

2 Q. And you state here that you were attacked by members of
3 Hezbollah, right?

4 A. That's what I read here.

5 THE COURT: Don't be cute. Just answer the question.

6 THE WITNESS: Yes.

7 Q. You said yesterday that you were attacked because you were
8 suspected of being a government informant, right?

9 A. I mean you could easily say that it was fueled by the rumor
10 that I was an American government informant.

11 Q. And that is what you said yesterday, right?

12 A. That's true.

13 Q. But that's not the reason that you were attacked, right?

14 A. No. That was the reason that I was attacked.

15 THE COURT: Keep your voice up, please.

16 Q. You were attacked --

17 THE COURT: Talk as if the person listening to you is
18 at the clock. See that clock. Project your voice there.

19 THE WITNESS: All right.

20 Q. You were attacked because a fight that you had with your
21 mother-in-law, right?

22 A. I mean do you believe a fight would -- an argument with my
23 wife will lead to 20 or 30 people surrounding my house within
24 two minutes with arms and shooting at my house? Do you believe
25 that?

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Kourani - cross

1 Q. Well, let's talk about the fight --

2 A. Do you believe -- no. I want to continue.

3 Q. I ask the questions here, OK.

4 A. Go ahead.

5 THE COURT: Why are we doing this? He says following
6 an argument with my wife, fueled by the rumor that I was an
7 American government informant, members of Hezbollah attacked my
8 home in Yater, Lebanon.

9 MS. HOULE: Because, your Honor, he has attempted to
10 mislead the Court about the reason that he was attacked.

11 THE COURT: How does he know -- come on, Ms. Houle, go
12 and do what you want to do but don't do stupid things.

13 Q. Mr. Kourani, you also tried to mislead the Court yesterday
14 about --

15 THE COURT: It's not misleading. There may be other
16 parts of it but this is not misleading.

17 Q. Well did you say anything in your declaration, Mr. Kourani,
18 about the fight with your mother-in-law?

19 A. I don't think that really matters for this motion.

20 THE COURT: You're right. It doesn't matter.

21 Ms. Houle, we don't need to nitpick.

22 MS. HOULE: Moving on, your Honor.

23 THE COURT: Good.

24 Q. Mr. Kourani, you described the time that you spent in
25 Lebanon after this attack yesterday, right?

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Kourani - cross

1 A. Yes.

2 Q. And you said that you were held in Lebanon because your
3 passport was held by the FBI, right?

4 A. I said that the American consulate, she took it from me,
5 and when I insisted on the reason why she confiscated my
6 passport, she told me to call the FBI. That's what I said
7 yesterday.

8 Q. And you described the process of you getting out of Lebanon
9 as fleeing, right?

10 A. Yeah.

11 THE COURT: What? What's the question? What was the
12 last word you used?

13 MS. HOULE: That he described getting out of Lebanon
14 as him fleeing from Lebanon.

15 THE WITNESS: I was worried about my wife.

16 Q. But, in fact, you stayed in Lebanon for several weeks after
17 you were cleared to fly, right?

18 A. Thank you for mentioning that. That's because of the
19 federal government.

20 Q. You stayed in Lebanon because it was your choice to stay?

21 A. I was forced to stay. Yes.

22 Q. It was your choice to stay?

23 A. I was forced to stay there.

24 Q. How were you forced to stay?

25 A. They took my passport and they didn't -- they banned me

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Kourani - cross

1 from flying back to the United States. They said I have to
2 give them two weeks before --

3 THE COURT: So let me ask this question. Did there
4 come a time when your passport was returned?

5 THE WITNESS: I'm sorry?

6 THE COURT: Did there come a time when your passport
7 was returned?

8 THE WITNESS: That's true.

9 THE COURT: And after that did you stay in Lebanon any
10 longer?

11 THE WITNESS: After that I book a ticket, I think the
12 same week. When I went to board the airplane, they said you
13 can't board, you have to reach back to the embassy.

14 THE COURT: So let me ask you this. You got the
15 passport back. That same week you made a reservation.

16 THE WITNESS: Exactly.

17 THE COURT: When was the reservation for?

18 THE WITNESS: I mean as --

19 THE COURT: Was it in the next few days or next few
20 weeks?

21 THE WITNESS: As close as I could get in the next few
22 days, you know.

23 THE COURT: In the next few days?

24 THE WITNESS: Yeah.

25 MS. HOULE: Mr. Kourani, that's not true.

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Kourani - cross

1 THE COURT: Just a minute, Ms. Houle.

2 Then what happened next?

3 THE WITNESS: Then I went to the airport. I got my
4 boarding pass. As soon I was about to board the airplane, the
5 flight attendant said that you can't board the airplane.

6 THE COURT: So you were forbidden to board the
7 airplane.

8 THE WITNESS: Thank you.

9 THE COURT: Did you go home? You went home?

10 THE WITNESS: She said that I have to reach out to the
11 American embassy again.

12 THE COURT: So what you did do?

13 THE WITNESS: I went back home.

14 THE COURT: How long did you stay home before you were
15 able to get out of the country?

16 THE WITNESS: I think the second day I sent an e-mail
17 to the consulate, until she replied to me and told me what's
18 the process, how was the process to go back to the United
19 States. It took another two or three weeks.

20 THE COURT: Until you got what?

21 THE WITNESS: She said that I have to book an airline
22 ticket and that's in my e-mails.

23 THE COURT: But you already did book the airline
24 ticket.

25 THE WITNESS: No. Let me finish. I have to book an

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Kourani - cross

1 airline ticket, and it has to be through one of the American
2 airlines like United Airlines or -- so I had to change my
3 ticket. And she said that it has -- I have to send the -- the
4 ticket has to be two weeks ahead, you know.

5 So I can't book a ticket for the second day because I
6 have to book a ticket, and then send it to the consulate, and
7 then the consulate will reply to me until I'm clear to go.

8 THE COURT: In total, Mr. Kourani, how long after your
9 passport was returned did you stay in Lebanon?

10 THE WITNESS: Three or four weeks.

11 THE COURT: You may question. But try to question on
12 important things.

13 MS. HOULE: I think he's continuing to mislead the
14 Court about --

15 THE COURT: Try to -- come on, Ms. Houle.

16 MR. SCHACHT: Objection.

17 THE COURT: Ms. Houle, he's not misleading on these
18 things.

19 THE WITNESS: Your Honor --

20 THE COURT: You don't need to say anything. Don't
21 speak -- don't volunteer information. You get in trouble when
22 you volunteer information. You should know that.

23 THE WITNESS: I'm already in trouble.

24 THE COURT: Right. That's why you got a good lawyer.

25 MS. HOULE: Let's look at paragraph --

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Kourani - cross

1 THE WITNESS: I know that. And I had a good lawyer
2 too.

3 THE COURT: All right. Enough of that.

4 Ms. Houle, next question.

5 BY MS. HOULE:

6 Q. Let's look at paragraph nine of your declaration.

7 You say here that you were fired from your job in
8 Chicago, right?

9 A. Yes.

10 Q. And you say that that was because of being delayed in
11 Lebanon and because the FBI had gone to your workplace, right?

12 A. That's true.

13 Q. But you've left out an important fact here, right? There
14 was another reason that you were fired?

15 A. I can't read your mind. Just can you say.

16 THE COURT: Did you leave out an important fact as to
17 the reason you were fired?

18 You don't have to read her mind. Listen to her
19 questions.

20 THE WITNESS: Those are the basic two reasons that I
21 got fired from my job.

22 Q. Didn't your boss accuse you of stealing money?

23 A. No, he didn't.

24 Q. Who was your boss at the time?

25 A. You know the owner of the company, they're brothers, a

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Kourani - cross

1 bunch of brothers, three brothers and I was dealing with the
2 three of them.

3 Q. Hikmat and Ibrahim are two of them, right?

4 A. And there is another one in Florida. I forget his name.

5 Q. And Ibrahim said that you took money that you were not
6 entitled to, right?

7 A. That's what the FBI agent said to me in the airport, Keri
8 Shannon, that's what she said.

9 Q. Ibrahim never said that to you?

10 A. No. I went to his office the second day I came from
11 Lebanon. And I confront him about it. And it came out it was
12 his bookkeeper mistake, normal mistake.

13 In addition, as I added yesterday, I still worked for
14 him for another week. But, you know, when I worked for him for
15 another week he said that my position that I had in Chicago was
16 gone because I was, you know, I left him for all that long.
17 And at the same time, you know, I had that one year contract
18 with him. So, you know, he didn't feel like -- like legally
19 fired me, but he still gave me a job that pays me not even
20 one-third of what I used to be paid, which is an indirect
21 approach of being fired.

22 Q. Right. I'd like to talk about that actually. So let's
23 look at paragraph ten.

24 You say here that you lost another job from the FBI's
25 intervention.

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Kourani - cross

1 THE COURT: Who cares, Ms. Houle?

2 THE WITNESS: Thank you.

3 THE COURT: What's the big deal?

4 MS. HOULE: Your Honor, in his motion he's argued that
5 these circumstances relating to losing his job and being
6 delayed in Lebanon and the circumstances of being attacked by
7 Hezbollah undermine the voluntariness of his statements.

8 THE COURT: It has nothing to do with the
9 voluntariness or lack of voluntariness of his statements.

10 MS. HOULE: That's our argument, your Honor, but
11 that's not the argument that he's made.

12 THE COURT: Give me a break.

13 Are you arguing Mr. Schacht, that these things have
14 anything to do with the issue of the voluntariness of his
15 statement to the FBI?

16 MR. SCHACHT: His mental state at the time that he
17 went to the FBI sets the groundwork for what happened later
18 which is to say he had this trouble in Lebanon, he was scared
19 for his life, he was scared for the lives of his father and his
20 sister and his children.

21 THE COURT: And that's why he went?

22 MR. SCHACHT: And that's the background of why he
23 went --

24 THE COURT: That's why he went, but things having to
25 do with his job in Chicago, is that of any importance?

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Kourani - cross

1 MR. SCHACHT: It's only important inasmuch as it sets
2 the stage but, obviously, that doesn't prove one way or the
3 other whether it's voluntary. I agree with you.

4 THE COURT: A lot of stuff on the stage, Ms. Houle.
5 The job of a good cross-examiner is to focus on the important
6 things on the stage, not the unimportant things.

7 BY MS. HOULE:

8 Q. A final question about your declaration, Mr. Kourani.

9 At paragraph 12, you say here before the first meeting
10 Mr. Denbeaux and the agents told me that he had spoken to the
11 FBI and that they had promised that no one other than their
12 supervisors --

13 A. I'm sorry. Which paragraph was that?

14 MS. HOULE: Paragraph twelve.

15 THE COURT: She's reading paragraph twelve, second
16 sentence.

17 THE WITNESS: OK.

18 THE COURT: Got it.

19 THE WITNESS: Yeah, I got it.

20 Q. "Before the first meeting, Mr. Denbeaux and the agents told
21 me that he had spoken to the FBI and that they promised that no
22 one other than their supervisors would know about the meetings
23 and that they would be confidential. Mr. Denbeaux told me that
24 I would not be prosecuted for what I said at those meetings so
25 that I could be honest."

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Kourani - cross

1 But that's not what you said yesterday, right?

2 A. I don't know, your Honor, if I could go into whatever.

3 THE COURT: Just do the best of your recollection, is
4 that about the same thing you said yesterday?

5 THE WITNESS: Yes. That is about the same thing I
6 said yesterday.

7 Q. Yesterday you said that Mr. Denbeaux did not tell you
8 anything about what the agents said before you went into the
9 first meeting.

10 A. I don't recall that. But I do remember that --

11 THE COURT: You do or you don't remember that
12 testimony?

13 THE WITNESS: I'm sorry?

14 THE COURT: You do or you don't remember that
15 testimony?

16 THE WITNESS: I don't remember that testimony.

17 MS. HOULE: May I approach?

18 THE COURT: You don't need to ask me. Do you have the
19 transcript?

20 MS. HOULE: Yes. It's right here.

21 (Pause)

22 THE COURT: Ms. Houle, I show you the transcript of
23 yesterday's session, page.

24 MS. HOULE: It is page 257.

25 THE COURT: Line.

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Kourani - cross

1 MS. HOULE: I am drawing your attention to line 13.
2 And it's also -- maybe we can pull it up on the screen,
3 Mr. DeLuca.

4 THE COURT: You may.

5 MS. HOULE: 257, Mr. DeLuca.

6 Q. Your attorney asked you, "Prior to that first meeting did
7 Mr. Denbeaux tell you anything about what the rules were about
8 the meeting?"

9 You said --

10 THE COURT: Wait until it's up on the screen. It's
11 not on the screen here. He's got 258 on the screen.

12 MS. HOULE: 257, Mr. DeLuca.

13 THE COURT: OK.

14 MS. HOULE: Line 13.

15 Q. "Prior to that first meeting did Mr. Denbeaux tell you
16 anything about what the rules were about the meeting?"

17 You answered, "No, but I assured Mr. Denbeaux that
18 when we first talked to them I want strict confidentiality."

19 But Mr. Denbeaux did not tell you anything about what
20 the agents had said before the first meeting, right,
21 Mr. Kourani?

22 MR. SCHACHT: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: I mean for me both statements are the
25 same.

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Kourani - cross

1 THE COURT: Let me ask you this. You were asked
2 yesterday at that page and line number.

3 "Q. Did Mr. Denbeaux tell you anything about what the rules
4 were about the meeting?"

5 This is before the first meeting. And you answered
6 no.

7 Is that your testimony?

8 A. Yes. That's my testimony, your Honor.

9 THE COURT: And today you say that, in your
10 declaration you say that you heard it directly from
11 Mr. Denbeaux and from the agents.

12 THE WITNESS: That's true.

13 THE COURT: Do you understand the contradiction
14 between --

15 THE WITNESS: I don't understand the contradiction.

16 MR. SCHACHT: Your Honor, I'm sorry. I apologize. I
17 have to --

18 THE COURT: Just object.

19 MR. SCHACHT: I have to make a speaking objection.

20 THE COURT: No, you can't.

21 MR. SCHACHT: I object.

22 THE COURT: Objection overruled.

23 THE WITNESS: Isn't that considered client lawyer
24 privilege, your Honor?

25 THE COURT: Not if you say it.

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Kourani - cross

1 THE WITNESS: All right. I mean.

2 THE COURT: You said --

3 THE WITNESS: When I say I assured Mr. Denbeaux, I
4 didn't say Mr. Denbeaux didn't say, Oh, no. That's not
5 assured. I didn't say that Mr. Denbeaux said that, Oh, no, the
6 FBI didn't agree to your rules.

7 THE COURT: So yesterday's testimony you assuring
8 Denbeaux and today's testimony is Denbeaux telling you. That's
9 the contradiction that Ms. Houle is asking you about.

10 THE WITNESS: It's a back-and-forth conversation, your
11 Honor. I didn't tell everything yesterday. But I was assured
12 by the FBI, by Mark, by the statesmen, that whatever was said
13 to stay confidential.

14 THE COURT: Go ahead, Ms. Houle.

15 MS. HOULE: Final topic, your Honor.

16 THE COURT: What?

17 MS. HOULE: It's my final line of questioning.

18 THE COURT: Are you finished?

19 MS. HOULE: One more question, set of questions.

20 BY MS. HOULE:

21 Q. You testified yesterday that in 2016 the FBI agents told
22 you that they believed that you were affiliated with Hezbollah,
23 right?

24 A. That's true.

25 Q. And you knew that the United States considered Hezbollah a

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Kourani - cross

1 terrorist organization, right?

2 A. I didn't look into the legal terms of that.

3 THE COURT: Did you know it or did you not know it?

4 THE WITNESS: I did know it.

5 Q. I couldn't understand.

6 A. I did know it, yes.

7 THE COURT: You did know it, yes?

8 THE WITNESS: Yes. Yes. Yes.

9 Q. And you knew that Hezbollah had committed attacks outside
10 of Lebanon, right?

11 A. I read that in the news.

12 Q. Including a bus bombing in Bulgaria, right?

13 THE COURT: The question is did you know it. Not what
14 you read in the news. The answer is yes or no.

15 THE WITNESS: No.

16 Q. You did not know about a bus bombing in Bulgaria?

17 A. I didn't know about that. I heard about it.

18 THE COURT: You heard about it?

19 THE WITNESS: Yes.

20 THE COURT: So hearing about it, do you know whether
21 it was true or not?

22 THE WITNESS: Your Honor, the news said that whoever
23 did it, it was like not clear.

24 THE COURT: You just told me that you heard on the
25 news that Hezbollah was involved in a bombing in Bulgaria.

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Kourani - cross

1 THE WITNESS: I didn't say that, your Honor.

2 THE COURT: What did you say?

3 THE WITNESS: I said that there was a bombing in
4 Bulgaria.

5 THE COURT: How did you know about it?

6 THE WITNESS: News.

7 THE COURT: OK.

8 THE WITNESS: It was all over the news.

9 THE COURT: And you don't hear -- you don't remember
10 anything saying that Hezbollah was suspect?

11 THE WITNESS: I heard that the military wing of
12 Hezbollah was accused of that.

13 THE COURT: OK. So the answer is that Hezbollah,
14 through its military wing, was suspect.

15 THE WITNESS: Exactly.

16 THE COURT: And you knew about that before you told
17 the FBI that you were not a member or affiliated with
18 Hezbollah.

19 THE WITNESS: Your Honor, if you look at the --

20 THE COURT: Yes, no?

21 THE WITNESS: No.

22 THE COURT: You didn't know about it?

23 THE WITNESS: I'm sorry. Can you repeat?

24 THE COURT: You didn't know about it?

25 THE WITNESS: Can you repeat the question?

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Kourani - cross

1 THE COURT: The question is when you told the FBI that
2 you were not a member of or affiliated with Hezbollah did you
3 know about the incident in Bulgaria?

4 THE WITNESS: Yes, I did know about the incident.

5 THE COURT: You did know?

6 THE WITNESS: Yes.

7 THE COURT: Yes?

8 THE WITNESS: Yeah, I did know. The incident happened
9 in 2012 or 2013. The FBI questioned me in 2016.

10 THE COURT: So did you lie to the FBI?

11 THE WITNESS: I never lied to the FBI.

12 I mean, your Honor, if I could bring your attention to
13 one thing. In the complaint, according to the government --

14 THE COURT: I'm not interested in the complaint
15 according to the government. Just interested in answers to the
16 questions.

17 THE WITNESS: This is very, very important.

18 THE COURT: You said you did not lie. OK. I got it.
19 I heard it.

20 Ms. Houle, continue.

21 MS. HOULE: No further questions, your Honor.

22 MR. SCHACHT: Nothing further from me, your Honor.

23 THE COURT: I have a couple questions.

24 When you hired Denbeaux, you told me yesterday that
25 you knew he was not a divorce lawyer, right?

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Kourani - cross

1 THE WITNESS: That's true.

2 THE COURT: And you knew he had no experience in
3 custody battles over children?

4 THE WITNESS: That's true.

5 THE COURT: But you went to him in an effort to get
6 your children back from Canada into the United States, right?

7 THE WITNESS: In an effort of seeking help or legal
8 advice.

9 THE COURT: So the answer is yes, you went to Denbeaux
10 to try to get help to get the kids in from Canada?

11 THE WITNESS: That's true.

12 THE COURT: And you knew that Denbeaux had no
13 experience in this matter, right?

14 THE WITNESS: Yes.

15 THE COURT: Did you believe that the only people who
16 could get or might be able to get the kids back from Canada was
17 the FBI?

18 THE WITNESS: Yes.

19 THE COURT: That's what you believed?

20 THE WITNESS: That's true.

21 THE COURT: So the purpose of you going to Denbeaux
22 was to get his help so you could induce the FBI to get your
23 kids back from Canada? Right?

24 THE WITNESS: I can't state that fact, your Honor.

25 THE COURT: Can't hear you.

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Kourani - cross

1 THE WITNESS: I can't state that fact.

2 THE COURT: Why not?

3 THE WITNESS: I mean I was still exploring any
4 options.

5 THE COURT: You had other reasons too, but one of the
6 big reasons --

7 THE WITNESS: I assure you it's not the reason that I
8 went to Mr. Mark Denbeaux so that he could talk to the FBI.

9 THE COURT: Well you wanted to talk to the FBI?

10 THE WITNESS: I'm sorry?

11 THE COURT: You wanted to talk with the FBI?

12 THE WITNESS: No. I didn't want to talk with the FBI.

13 THE COURT: What?

14 THE WITNESS: I didn't want to talk to the FBI at that
15 time.

16 THE COURT: Isn't it true that you wanted the FBI to
17 help you get your kids back from Canada?

18 THE WITNESS: What I was really afraid of, your
19 Honor --

20 THE COURT: That's yes, no, or I don't know.

21 THE WITNESS: I don't know.

22 THE COURT: You don't know.

23 And you were concerned about your family in Lebanon?

24 THE WITNESS: That's true. I was concerned about
25 that.

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Kourani - cross

1 THE COURT: You knew that Denbeaux was not an
2 immigration lawyer? Right?

3 THE WITNESS: Yes.

4 THE COURT: Yet, you went to Denbeaux for help in
5 getting your family immigrated from Lebanon and your kids into
6 the United States from Canada against the wishes of their
7 mother? Right?

8 THE WITNESS: No. That's not right.

9 THE COURT: Not right?

10 THE WITNESS: No.

11 THE COURT: Why did you go to Denbeaux?

12 THE WITNESS: I'm sorry?

13 THE COURT: Why did you go to Denbeaux?

14 THE WITNESS: Friendship, legal advice.

15 THE COURT: Friendship. Did you know him before?

16 THE WITNESS: My friend in Wisconsin introduced me to
17 him.

18 THE COURT: A friend in Wisconsin.

19 So did you ask your friend in Wisconsin to recommend a
20 professor who could be your friend, or did you go to Wisconsin
21 to get a suggestion of who might be a good lawyer for you?
22 Tell me, Mr. Kourani.

23 THE WITNESS: I have to tell you. You really have to
24 let me express myself here. Like all of the time --

25 THE COURT: The truth is you wanted Denbeaux to help

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Kourani - cross

1 you in Denbeaux's expertise, right?

2 THE WITNESS: The truth is I trusted Denbeaux.

3 THE COURT: He was a criminal defense lawyer, right?

4 THE WITNESS: I don't know at that time what he was.

5 THE COURT: You didn't know. What did you know about
6 him?

7 THE WITNESS: I know about him as -- as a good person,
8 as a law professor.

9 THE COURT: You didn't know him before you started?

10 THE WITNESS: Yeah, but I have a couple conversations
11 before.

12 THE COURT: He was a good -- a lot of people are good
13 persons but you went to Denbeaux.

14 Why did you go to Denbeaux? You went to Denbeaux
15 because of his lawyering ability, right?

16 THE WITNESS: One of the reasons. I mean all of the
17 things that we used to talk about is --

18 THE COURT: Was there any other reason you went to
19 Denbeaux?

20 THE WITNESS: Connection.

21 THE COURT: Connection to what? To your friend in
22 Wisconsin?

23 THE WITNESS: Yeah. To my friend in Wisconsin.

24 THE COURT: So you went to Denbeaux even though you
25 knew as a lawyer he couldn't help you with immigration, and he

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Kourani - cross

1 couldn't help you with custody, he couldn't help you with
2 marital discords, but he did know how to represent you to the
3 government; isn't that correct?

4 THE WITNESS: The immigration, I never brought it up,
5 your Honor.

6 THE COURT: Answer the question, would you please,
7 Mr. Kourani.

8 THE WITNESS: Yes.

9 THE COURT: It was your purpose to try to get the FBI
10 to help you bring your kids in from Canada and your family in
11 from Lebanon? Right?

12 THE WITNESS: No. That's not right.

13 THE COURT: Not right?

14 THE WITNESS: No.

15 THE COURT: Well what was your purpose?

16 THE WITNESS: My purpose was safety, your Honor.

17 THE COURT: Safety?

18 THE WITNESS: Yes.

19 THE COURT: So it's a third purpose?

20 THE WITNESS: Yes.

21 THE COURT: Bring the kids in from Canada, bring your
22 family in from Lebanon, and be safe while you're doing it?

23 THE WITNESS: A condition.

24 THE COURT: So everything was to get Denbeaux to
25 assist you in approaching the FBI so you could accomplish these

I3s9kou1

Kourani - cross

1 objectives?

2 THE WITNESS: No. That's not true. That's not true.

3 THE COURT: Not true?

4 THE WITNESS: No.

5 The only reason the FBI came in when he said that why
6 don't you go to Canada and bring them in. So this is --

7 THE COURT: He said why don't you go bring them in.

8 THE WITNESS: Yeah.

9 THE COURT: Now I don't want to pry into your internal
10 conversations with your attorney. I'm just asking about your
11 purpose.

12 So you told me you needed the FBI's help to bring your
13 kids in from Canada and the immigration of your family from
14 Lebanon and your own safety. And Denbeaux was going to help
15 you do that.

16 THE WITNESS: That's not my own safety, your Honor.
17 It's my family's safety, my kids' safety.

18 THE COURT: So we'll leave that out. We'll leave that
19 out.

20 Now, before you were approached the FBI, through
21 Denbeaux's calling them, the FBI had broken off contact with
22 you, didn't they?

23 THE WITNESS: I don't think so.

24 THE COURT: They were still asking you to talk?

25 THE WITNESS: Yes.

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Kourani - cross

1 THE COURT: When was the last time they asked you to
2 talk?

3 THE WITNESS: When they went to my wife in Canada in
4 February they were still sending me threatening messages.

5 THE COURT: But you were not talking to them?

6 THE WITNESS: No.

7 THE COURT: Now all of a sudden you are interested in
8 talking to them.

9 THE WITNESS: It's not all of a sudden. It's an
10 ongoing coercion, your Honor. It's an ongoing coercion.

11 THE COURT: Coercion or not coercion, until
12 February 2017 you didn't want to talk to the FBI anymore.

13 THE WITNESS: I didn't trust them.

14 THE COURT: I don't care what the reasons were.
15 You didn't want to talk to the FBI anymore, right?

16 (Pause)

17 THE COURT: Right?

18 THE WITNESS: Yes.

19 THE COURT: Now you wanted to talk with them? And you
20 were concerned that your community and the affiliates in
21 Lebanon and Canada would not hear of your conversations with
22 the FBI, right?

23 THE WITNESS: That's true.

24 THE COURT: Because they could kill you?

25 THE WITNESS: Or my family.

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Kourani - cross

1 THE COURT: They could kill your family?

2 THE WITNESS: That's true.

3 THE COURT: Kill your children?

4 They were nasty people?

5 THE WITNESS: I don't know if they could do that to
6 the babies.

7 THE COURT: They are nasty people?

8 THE WITNESS: I know for a fact they prevent me from
9 talking to them for the last few months.

10 THE COURT: I'm sorry?

11 THE WITNESS: I know for a fact they prevented me from
12 talking to them for the last few months.

13 THE COURT: They what?

14 THE WITNESS: Prevented me from reaching out to my
15 kids for the last few months.

16 THE COURT: That's an example of how powerful they
17 are, right?

18 THE WITNESS: That's true.

19 THE COURT: So the purpose of the confidentiality you
20 wanted was to protect your family and your life, right?

21 THE WITNESS: I don't care about my life.

22 THE COURT: What?

23 THE WITNESS: I don't care about my life. I care
24 about --

25 THE COURT: You don't care about your life?

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Kourani - cross

1 THE WITNESS: I care about my family's life.

2 THE COURT: To protect your family and to protect your
3 kids?

4 THE WITNESS: That's true.

5 THE COURT: That's why you --

6 THE WITNESS: If I cared about my life, I wouldn't be
7 speaking here today.

8 THE COURT: That's why you went to the government?

9 THE WITNESS: That's true.

10 THE COURT: And that's why you wanted confidentiality?

11 THE WITNESS: That's true.

12 THE COURT: That's why you didn't want anybody to know
13 about your conversations with the government?

14 THE WITNESS: That's true.

15 THE COURT: And out of this comes your statement that
16 you were also promised some kind of immunity.

17 THE WITNESS: Confidentiality is bigger than immunity,
18 your Honor.

19 THE COURT: Confidentiality is what?

20 THE WITNESS: Is bigger than immunity.

21 THE COURT: It's different from immunity, isn't it?

22 THE WITNESS: My understanding is bigger. I could
23 take immunity, but still could be raised to the public, could
24 be spread out to the public that I'm taking immunity and
25 testifying. When it's confidential everything has to stay

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Kourani - cross

1 closed. That's my understanding.

2 THE COURT: Did you think that no matter what you said
3 the government couldn't prosecute you?

4 THE WITNESS: Yes.

5 THE COURT: Did you think that if you told a lie the
6 government couldn't prosecute you?

7 THE WITNESS: (Pause) A lie doesn't help no one, yeah.

8 THE COURT: I asked you a question.

9 THE WITNESS: They wouldn't.

10 THE COURT: What?

11 THE WITNESS: They wouldn't.

12 THE COURT: They wouldn't?

13 THE WITNESS: Yes.

14 THE COURT: Because they told you they wouldn't?

15 THE WITNESS: Yes.

16 THE COURT: That's what you say?

17 THE WITNESS: Yes.

18 THE COURT: Any other questions from anybody?

19 (Pause)

20 MS. HOULE: Considering, your Honor, that there
21 were --

22 THE COURT: Don't give me a speech. Do you have any
23 questions?

24 MS. HOULE: Nothing other than what I've already tried
25 to ask, no, your Honor.

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Kourani - cross

1 THE COURT: Does the moving party have any questions?
2 Mr. Schacht?

3 MR. SCHACHT: No, your Honor.

4 THE COURT: You're excused, Mr. Kourani. You can step
5 down. Thank you.

6 (Witness excused)

7 THE DEFENDANT: I would like to take a break, your
8 Honor.

9 THE COURT: Sure.
10 We'll take ten minutes.

11 (Recess)

12 When we get back we'll have argument on the motion.

13 (Recess)

14 (Continued on next page)

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Summation - Mr. Bove

1 THE COURT: By mutual consent, Mr. Bove will go first.
2 Right?

3 MR. SCHACHT: Yes, sir.

4 THE COURT: Mr. Bove.

5 MR. BOVE: Thank you, Judge. I think the legal
6 framework here is pretty clear and set out recently by the
7 Second Circuit in Haak. I want to get right to the point.
8 This is a motion where the defendant is arguing that his
9 statements were coerced, so the relevant considerations are the
10 defendant's characteristics, the circumstances of the
11 interviews, and the conduct of law enforcement.

12 I don't think there is a much of a dispute that the
13 first two of those strongly, very strongly, supports denying
14 the motion. The defendant is extremely sophisticated. You
15 heard him testify yesterday that he believes he is more
16 sophisticated and more qualified for the FBI's jobs than the
17 agents themselves.

18 The circumstances of the interviews are as follows.
19 He requested them through Mark Denbeaux. They were conducted
20 at Seton Hall in a voluntary setting. The agents were in
21 plainclothes. And there is simply no allegation that anything
22 threatening or coercive was said during of those.

23 At the end of the day, Judge, I think it is pretty
24 clear that given those circumstances, which were entirely
25 voluntary, it boils down to the discussions of confidentiality

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Summation - Mr. Bove

1 and the record relating to that, and this notes document,
2 Government Exhibit 402.

3 THE COURT: What is 402?

4 MR. BOVE: That is Mr. Denbeaux's notes document. The
5 testimony is pretty much undisputed that he slid it over to the
6 agents in the April 3, 2017 interview, the agents discussed it
7 and said thank you.

8 Before I get to those two issues --

9 THE COURT: There is a factual dispute about what
10 happened to 402. He said they looked at it and gave it back,
11 didn't take a copy, and Denbeaux and Kourani say that a copy
12 was taken by Shannon.

13 MR. BOVE: I do agree that there is a dispute in that
14 respect, Judge. But what is not seriously in dispute about
15 this document is that the only words that were said by the FBI
16 agents in that interview after Mr. Denbeaux provided it to them
17 were "thank you."

18 THE COURT: The best case that can be made for Kourani
19 is that he was induced to speak, by his understanding, which
20 was reasonable, that what he said could not be used against him
21 because he was promised confidentiality. Confidentiality is
22 not immunity. We need to talk about the difference legally
23 between the two. And we need to talk about the reasonable
24 understanding of someone told something by government agents
25 who lacked authority. Those are the issues I'm interested in.

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Summation - Mr. Bove

1 MR. BOVE: Thank you, Judge. That's helpful.

2 Focusing on confidentiality, at a hearing, your Honor,
3 there are factual issues to be resolved. I think it is clear
4 the credible evidence at this hearing came from Special Agent
5 Costello and Special Agent Shannon. I am not impugning Mr.
6 Denbeaux at all.

7 THE COURT: They did say promised confidentiality, but
8 they added confidential so the family won't be hurt.

9 MR. BOVE: Special Agent Shannon also testified that
10 the representation was that they would use their best efforts
11 to provide confidentiality.

12 THE COURT: I think the best efforts were for
13 immigration purposes.

14 MR. BOVE: I think it was both, Judge, and I think
15 that Mr. Denbeaux agreed with that during cross-examination.
16 In any event, whether it was best efforts or not, the focus was
17 on concerns expressed by the defendant and Mr. Denbeaux.

18 THE COURT: I agree. But I'm bothered by the
19 memorandum. Let's say Denbeaux had no basis to say what he did
20 about agreed that he committed no crime and faces no
21 prosecutions. That is for me to judge whether it is reasonable
22 or not. But assume, as we have to, that the agents saw this
23 and didn't correct it. This is before Kourani said anything
24 that he said. Can he argue, in effect, promissory estoppel,
25 that he was induced and relied on the fact that the agents did

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Summation - Mr. Bove

1 not contradict the statement of his lawyer about his immunity.

2 MR. BOVE: The answer is very clear, Judge, from the
3 Second Circuit just this month. The answer is no, he cannot
4 argue promissory estoppel. There must be -- this is directly
5 from Judge Raggi -- a clear and unambiguous promise of immunity
6 from the agents. The only record here at this hearing is what
7 the agents said is "thank you." The law from the circuit this
8 month is clear that the agents did not have a duty to correct
9 Mr. Denbeaux's misimpression.

10 This is particularly true in this context, where there
11 is a lawyer there, Mr. Kourani is there. Mr. Denbeaux
12 acknowledged yesterday that he is more than capable of having
13 confronted the agents if he wanted an answer to that question.
14 He failed to do so. It was clear that he regrets that, so
15 perhaps that was his error.

16 THE COURT: He said that it all goes to what was the
17 purpose of the meeting, which is a different issue.

18 MR. BOVE: I think it is, Judge.

19 THE COURT: I'm troubled by the fact that the agents
20 had a piece of paper from a lawyer in their hands that raised a
21 question as to what could be done with what Kourani said and
22 didn't correct it.

23 MR. BOVE: Judge, the problem is that the document
24 itself is internally inconsistent. It wasn't clear to the
25 agents, and they said this, it was not clear to them what Mr.

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Summation - Mr. Bove

1 Denbeaux was trying to communicate.

2 THE COURT: He said they were shocked. He said they
3 were shocked by Denbeaux's line which I just read out. "It has
4 already been agreed he has committed no crime and faces no
5 prosecution."

6 MR. BOVE: One of the reasons they were shocked by
7 that --

8 THE COURT: In the same sentence, "not seeking any
9 immunity or protection because, as has already been agreed, he
10 has committed no crime and faces no prosecution." The agents
11 did not agree, as this memorandum said, that he did not clearly
12 commit a crime.

13 MR. BOVE: Judge, not even Mr. Denbeaux agreed with
14 what was written in this document. I don't even think Mr.
15 Kourani believed he had committed no crime. This was a ploy
16 where they were seeking to put themselves in this position, and
17 I submit it was intentional.

18 THE COURT: I agree with the ploy. But it is hard for
19 me to accept the proposition that the agents shouldn't have
20 corrected the record.

21 MR. BOVE: Judge, that proposition comes from the
22 Second Circuit.

23 THE COURT: All they had to say was, Mr. Denbeaux, we
24 made no agreement.

25 MR. BOVE: Haak is clear -- this is Judge Raggi in the

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Summation - Mr. Bove

1 Second Circuit this month -- that they were not required to do
2 that. What is required here on this motion is for the
3 defendant to present clear and convincing evidence that there
4 was a promise of immunity. The only credible evidence at this
5 hearing is that the agent said "thank you" in response to this
6 document.

7 THE COURT: What about a promise of confidentiality?
8 It might have been a clear and unmistakable promise in the
9 words but not in the scope. What about that?

10 MR. BOVE: This is now stepping away from this
11 document because Mr. Denbeaux didn't reference confidentiality
12 in this document, which I think supports our position that
13 these were internally inconsistent assertions being made by Mr.
14 Denbeaux that led to confusion on the part of the agents and
15 helps to explain why their handling of the situation was
16 rational.

17 Now I do want to focus on the confidentiality
18 discussion. It was clear from both Mr. Denbeaux and the
19 defendant that the purpose of the request for confidentiality
20 was an effort to try to prevent members of the Lebanese
21 community from learning that the defendant was meeting with the
22 FBI. But there are several indications in the record that not
23 even Mr. Denbeaux and Mr. Kourani believed that this
24 confidentiality was a categorical representation by the agents,
25 much less a representation on behalf of the U.S. Attorney's

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Summation - Mr. Bove

1 office or other parts of the government.

2 THE COURT: Denbeaux knew that they had no authority.

3 MR. BOVE: He admitted that, Judge. So how do we know
4 that this confidentiality discussion was not categorical,
5 meaning that everybody who was a party to these discussions
6 understood that this was absolutely not an unconditional,
7 categorical promise?

8 First of all, and I think this is undisputed, the
9 agent said, look, you're asking for these immigration benefits;
10 we are going to have to talk to other parts of the United
11 States government, the Department of Homeland Security. I
12 believe Mr. Kourani said he was well aware they would have to
13 talk to the department of state.

14 In addition, the agent said you're asking for your
15 children to be brought here from Canada, we are going to have
16 to talk to the Canadian government. Judge, it was clear from
17 what the agents communicated to both Denbeaux and Kourani that
18 this wasn't going to be just a general reference to Mr. Kourani
19 when they reached out to these entities. They were going to be
20 asking for a benefit if they did this.

21 If they did this, they were going to have to ask these
22 other agencies and entities to do something. And in order to
23 explain why they were doing that, they would have to explain
24 they were seeking things on Kourani's behalf because he had met
25 with them and because he was providing assistance.

1 Another way you know, it is clear from this record,
2 that the confidentiality representation was not absolute, that
3 there were clearly exceptions, is Mr. Denbeaux admitted
4 yesterday and Mr. Kourani admitted today that he well
5 understood that he could be prosecuted for making false
6 statements in that interview.

7 So it was clear then, Judge, that the basis of that
8 prosecution, if it were to come to pass, would be the use of
9 his statements against him. This is another respect in which
10 both men, Denbeaux and Kourani, have acknowledged at this
11 hearing that they fully understood that it could come to pass
12 that the statements and the meetings would be disclosed in a
13 criminal prosecution, as they are here.

14 The last point, Judge. Not even Mr. Denbeaux
15 believed, and he acknowledged this, that this confidentiality
16 representation was absolutely. I asked him on cross-
17 examination, isn't it true, sir, that in May of 2017 you
18 threatened to go to the media about this case? He said,
19 actually I threatened not only to go to the media but also to
20 tell members of the defense bar about the way in which this
21 investigation had been handled.

22 What you have in this motion, Judge, is Mr. Kourani
23 and Mr. Schacht trying to use this confidentiality discussion
24 as a shield, whereas it was Mr. Denbeaux -- Special Agent
25 Costello testified about this conversation as well -- who

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Summation - Mr. Bove

1 threatened to breach confidentiality before anyone. He was
2 first in line.

3 THE COURT: It was a threat to the government about
4 the government's alleged breach of the confidentiality. What
5 happened was that Kourani wanted to come in and talk, but in
6 the government's estimation not level, just talk about
7 something but not all things.

8 MR. BOVE: Not only in the government's estimation.
9 That was communicated.

10 THE COURT: Yes. When the government broke off the
11 interview by saying you're lying to us or to that effect,
12 that's when the threat came.

13 MR. BOVE: It did, Judge.

14 THE COURT: They exposed themselves, and Denbeaux knew
15 that. It was all calculated risk, I think. You can finish.

16 MR. BOVE: It was a calculated risk by Mr. Kourani and
17 Mr. Denbeaux to try and extract benefits from the U.S. govern-
18 ment while providing incrementally pieces of information with-
19 out disclosing the whole truth. It was a calculated effort by
20 those two men to do that, and the agents time and time again
21 told them that is not acceptable.

22 Judge, this confidentiality issue was not reached, the
23 case was not unsealed, until Mr. Kourani was provided with one
24 final opportunity to be forthcoming. Special Agent Shannon
25 testified about this. He was arrested. The complaint was

1 sealed. Nothing had been made public.

2 There were multiple proffers. He was kept at a hotel
3 room instead of being incarcerated, instead of being lodged
4 here at the facility. He had every opportunity to control
5 whether confidentiality would be maintained by being candid,
6 and he simply failed to do so.

7 Judge, this confidentiality discussion, the law is
8 clear. We need a clear and unmistakable promise of immunity
9 for cooperation. That is not what this was. Judge Cote said a
10 promise of confidentiality and a promise of use immunity are
11 separate and distinct assurances. That's in the Rudaj case
12 that was cited to. She says that, Judge, because this is a
13 very practical point. Defendants cannot stretch a conversation
14 about confidentiality --

15 THE COURT: There are some courts of appeals that say
16 a promise of confidentiality amounts to, effect, a use
17 immunity.

18 MR. BOVE: Not in this circuit, Judge.

19 THE COURT: No.

20 MR. BOVE: In this circuit the binding law is Haak.
21 Haak says it must be clear and unambiguous.

22 THE COURT: Yes, it's a very clear thing.

23 MR. BOVE: So the promise of confidentiality rooted in
24 concerns about disclosures to the Lebanese community is
25 absolutely not a promise of immunity. No reasonable person

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Summation - Mr. Bove

1 could think otherwise, certainly not an extremely sophisticated
2 defendant who said things yesterday such as I left the room
3 because I was concerned the agents didn't understand the
4 immigration law that I was talking about, and I told Mr.
5 Denbeaux he better fix this because I was here to demand what I
6 was entitled to.

7 This is an extremely sophisticated defendant who is
8 running a ploy and is now seeking to avoid the consequences of
9 his actions and seeking to trick the Court into crediting this
10 position that is just counterfactual.

11 THE COURT: What's Judge Cote's case, United States v.
12 Rudaj?

13 MR. BOVE: Yes, Judge. I have the cite.

14 THE COURT: I have it. It's a Westlaw site.

15 MR. BOVE: Judge, I know there is authority in other
16 circuits about this. One of them is this Punni case from the
17 First Circuit. "Simply because an FBI agent appropriately may
18 keep an informant's identity to himself does not by some
19 mysterious alchemy imbue the agent with otherwise nonexistent
20 power to promise use immunity." That is a very practical point
21 that Mr. Kourani surely understood and Mr. Denbeaux, who has
22 acknowledged that he is an experienced criminal attorney,
23 surely understood.

24 To the extent that the advice Mr. Denbeaux gave to Mr.
25 Kourani or the manner in which Mr. Denbeaux handled the

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Summation - Mr. Bove

1 situation impacted Kourani's view of what was going on, Judge,
2 that is absolutely not a basis for suppression initiation. The
3 actions of private actors do not support a finding of
4 coerciveness under the Constitution. That is also a binding
5 legal proposition here in these proceedings.

6 Mr. Denbeaux testified about maybe I made some
7 mistakes, maybe I should have done things differently. That is
8 not something that can be placed at the feet of the agents or
9 the government to suppress otherwise voluntary statements.

10 Judge, it bears noting these are statements relating
11 to extremely serious conduct involving the activities of a
12 terrorist organization to target United States citizens in this
13 city. This is a man who admitted -- you heard this from
14 Special Agent Shannon and there was some discussion of it
15 yesterday -- he was trained by this organization to resist
16 interrogation, to participate in counterintelligence
17 activities.

18 All of that supports a finding that his testimony was
19 not credible on any of the matters he described, and, second,
20 that this was an intentional ploy by Kourani to try to induce
21 the government to provide benefits he was not entitled to. I
22 think your Honor made the point this morning, one of the things
23 he seemed to be asking for was for the FBI to rip his children
24 involuntarily out of Canada from the wife. These were bold,
25 extremely aggressive demands from Mr. Kourani.

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Summation - Mr. Schacht

1 He engaged in a ploy. He is now in a situation and
2 should be required to face the consequences of his actions.
3 His voluntary statements about his actions are admissible
4 against him.

5 THE COURT: Thank you.

6 Mr. Schacht.

7 MR. SCHACHT: Thank you, Judge. Your Honor, I agree
8 that the recent Haak decision is controlling here.

9 THE COURT: That's a great concession.

10 MR. SCHACHT: Thank you.

11 THE COURT: Even if I didn't agree, what I do as a
12 district judge with that as a precedent?

13 MR. SCHACHT: You can do what you want.

14 THE COURT: Sure.

15 MR. SCHACHT: Looking at that case is really, really
16 helpful. I have been doing this 28 years, and I know you have
17 been doing it longer than I have. I have never, ever seen
18 anything remotely like what happened to my client in this case.

19 I have the Haak decision in front of me. What the
20 detectives in that case --

21 THE COURT: Don't exaggerate.

22 MR. SCHACHT: I'm not exaggerating judge. I
23 researched this thoroughly. I found no case like this. I have
24 read all the cases the government supplied. There is no case
25 like this, not a published case.

1 In Haak, all the detectives said to the defendant that
2 the defendant alleged made his statements involuntary was, "I'm
3 not trying to screw with you." They also said they are not
4 trying to make trouble for him. These were ambiguous,
5 ambiguous statements. They were nothing remotely like what
6 happened here.

7 What happened here, Judge, is a lawyer had a conver-
8 sation before my client was interviewed and the agents promised
9 confidentiality. There has been a lot of talk here about
10 whether something is authorized, not authorized. I think it is
11 very important that we get into the weeds a little bit, Judge.
12 I'm looking at Special Agent Costello, page 91 line 21. Your
13 Honor brought this out, thank you.

14 "Did you have to check with your superiors?

15 "The witness: No, I did not, not at that juncture.

16 "The Court: Why not?

17 "The witness: I relayed the conversation to my
18 superiors, but I'm authorized, at least on that call, to answer
19 his question."

20 That's talking about the issue. He was authorized to
21 offer confidentiality. That's in the record.

22 THE COURT: I don't get that from that snippet of
23 conversation. It is clear he wanted confidentiality. What is
24 ambiguous is the scope of that confidentiality. Clearly, the
25 confidentiality did not restrict the agents from talking to the

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Summation - Mr. Schacht

1 supervisors and the supervisors talking to other organs of
2 government.

3 MR. SCHACHT: Right. My client had no fear of ICE or
4 the department of state knowing about it.

5 THE COURT: The promise of confidentiality could mean
6 anything.

7 MR. SCHACHT: No.

8 THE COURT: He also was clear as to his fears and his
9 concerns. And he is also clear as to why he had the meeting.
10 He initiated the meeting.

11 MR. SCHACHT: Yes.

12 THE COURT: And initiated the conversations. And it
13 was not a proffer session, Denbeaux said. What he wanted was
14 to protect his family from the repercussions of word getting
15 out that he is an informer. He was afraid that his kids would
16 be killed and that his family would be killed, and he didn't
17 want the confidentiality to be breached. The government
18 understood that.

19 MR. SCHACHT: The government did breach it.

20 THE COURT: How did it breach it? By arresting him?

21 MR. SCHACHT: No. They breached it by making a
22 complaint and a press release and by seeking to introduce in
23 public court, which is what happened here, all these
24 statements.

25 THE COURT: It's your motion.

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Summation - Mr. Schacht

1 MR. SCHACHT: Right, Judge. That's what my motion
2 says, that these statements must be suppressed.

3 THE COURT: The press release is not a part of the
4 record in this case. I can't deal with it.

5 MR. SCHACHT: I attached it to my motion. I think it
6 is. In any event, the point is by arresting him, the
7 indictment is based upon his statements, Judge. If you look at
8 the complaint when it was unsealed --

9 THE COURT: As Shannon said, he had opportunity to
10 clear up things.

11 MR. SCHACHT: Judge, they said he withheld some
12 information. They promised confidentiality. Again I would
13 like to read from the transcript. The confidentiality was not
14 conditional, Judge. I'm reading from Special Agent Costello,
15 page 89, cross-examination.

16 "Q. But you didn't say to Mr. Denbeaux that that was a
17 condition or conditional promise, right? Withdrawn. I'll
18 rephrase the question. You didn't say to him that it was only
19 confidential if he tells the truth? You didn't say that, did
20 you?

21 "A. No, I did not."

22 Why was this, and why did they eventually arrest him
23 and unseal the complaint? We agree, on page 167, Agent Shannon
24 said lack of candor on the part of Mr. Kourani. If they
25 thought he lacked candor or lied about something, if they asked

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Summation - Mr. Schacht

1 him do you know such and such a person is a terrorist and he
2 lied and said no, perhaps that would be a 1001 violation and
3 then they could indict him for that 1001 violation.

4 But that's not what happened here. He is not charged
5 with 1001. He is charged with material support for all the
6 statements that the government is saying, Judge, are truthful.
7 What they are saying is he admitted, according to them, that he
8 was a terrorist, he admitted to doing certain things. So he is
9 not being prosecuted for his lies, he's being prosecuted for
10 what they say is the truth.

11 The government is not going to stipulate that all of
12 his confession supposedly is false. Then he wouldn't be
13 arrested. They're prosecuting him for what they say is the
14 truth. What they are saying is he didn't say enough, he didn't
15 give us enough. I have no idea if that is true or not true.
16 But they could charge him with 1001 if he denied something.
17 That's not what happened. That's why they violated it.

18 Judge, you saw what Mr. Denbeaux's personality is
19 like. You saw what my client is like. My client, I say this
20 with some affection for him, he is a difficult guy. You saw he
21 didn't answer questions very easily. He's angry. Do you think
22 he would have sat in the room with the agents handing over that
23 document that says he is not going to be prosecuted without
24 getting a promise, without getting something?

25 They were led to believe that he was not going to be

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Summation - Mr. Schacht

1 prosecuted. Really, Agent Shannon almost admits that. The
2 only reason is because he didn't give them enough. They were
3 planning all along not really to arrest him. That's why, when
4 your Honor asked Agent Costello why was it that you didn't say
5 anything about this written document with which you disagreed,
6 the answer was it was more important to us to get the
7 information. It was a kind of significant national security
8 issue they thought. They were going to blow by that lawyer's
9 statement that obviously my client sitting there was relying
10 upon, a document that says he's not going to be prosecuted.

11 The government can say it is internally inconsistent
12 and it is not well written and all of that, and I agree. I
13 said that in my motion. I think Denbeaux did a horrendously
14 awful job in this case. I think we can all agree on that. But
15 my client shouldn't be punished for that.

16 My client sat there looking at a document that says no
17 prosecution. The fact that that document is crappy shouldn't
18 matter. In his mind he has a lawyer, he has a law professor,
19 he's sitting in a law school. How is he to know that there was
20 some disagreement on the part of the FBI?

21 Also, you heard both of the agents say that
22 repeatedly, repeatedly they told him there's no promises about
23 the visas because we don't know how long it can take and there
24 are other agencies and if the other agencies don't do it. They
25 did not once say we disagree with this document, according to

1 them.

2 I find it hard to believe that in some way they did
3 not convey verbally, by their body language, by simply
4 accepting the document and not arguing about it, in the context
5 of what went on, where they are constantly warning them that
6 there is no promise about immigration benefits, for them to
7 then just take it and say thank you or something like that.

8 That is an agreement. Remember, it doesn't have to be
9 a binding agreement in court. I'm not suing under contract
10 law. It just goes to the issue of voluntariness and what was
11 in my client's mind. Much more so than the lines the
12 detectives used in Haak, this was a binding promise in my
13 client's mind. In Haak the detectives just say stuff like
14 "we're not trying to screw with you." That is a far cry from a
15 document written by a lawyer that says no prosecution in it.

16 Also, you remember Mr. Denbeaux actually says that
17 that whole document is a summary of what had gone on because
18 that was at the second meeting, I believe. That was a summary
19 of what had gone on at the first meeting.

20 A lot of the language in that document, the Denbeaux
21 document, is unusual. As I was reading through the transcript
22 last night, I noticed something that I thought was curious and
23 telling and made me think that Denbeaux was telling the truth
24 when he said that was a summary of what they discussed on the
25 first day.

1 Denbeaux uses a very odd phrase that we had some talk
2 about in court the other day. That's in the middle of the
3 exhibit, where Denbeaux talks about the government wants him to
4 break down various walls. I was surprised as I was reviewing
5 the transcript because I think that is an unusual express.

6 On page 59 Special Agent Costello says, "I believe I
7 used the phrase 'we've broken down some walls.'" He was
8 talking about a different meeting, not the first meeting. I
9 think he was talking about the third or fourth meeting. But
10 obviously that is an expression that Costello admits using.

11 The fact that Denbeaux used that expression in his
12 document that he made at that time, which I posit is an unusual
13 expression, and that we know that Costello used it in court the
14 other day and said he used it at some of the meetings would
15 tend to support Denbeaux's testimony that that document is
16 actually, as he and Mr. Kourani said, a summary of what went
17 on.

18 Your Honor, I ask you also to disregard what the
19 prosecutor said about what this case is supposedly about
20 according to him. I don't think it has any or it shouldn't
21 have any legal relevance. Whether this is a material support
22 case or a drunk driving case or whatever, a petit larceny case,
23 shouldn't have any bearing on the outcome.

24 My client is not alleged to have personally harmed
25 anybody. In fact, Hezbollah is not alleged, as far as I'm

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1 aware, to have ever carried out any kind of attack within the
2 United States. We heard about attacks in other countries. I'm
3 not here representing or supporting Hezbollah in the slightest.
4 I just don't think that the issue of the charges should in any
5 way play a role in your decision, your Honor.

6 Thank you.

7 THE COURT: There are certain fundamental propositions
8 that apply. It is well-settled that the government may in its
9 discretion make agreements in which it exchanges various levels
10 of immunity from prosecution for the defendant's cooperation.
11 I'll leave out the citations here. We'll follow this with a
12 written short opinion.

13 In order to specifically enforce a promise made by the
14 government, a defendant must show -- it is the defendant's
15 burden -- (1) that the promisor had actual authority to make a
16 particular promise, (2) that the defendant detrimentally relied
17 on it. If either part of this showing fails, the promise is
18 unenforceable.

19 The United States is not bound by the unauthorized
20 acts of its agents. Anyone entering into an arrangement with
21 the government takes the risk of having accurately ascertained
22 that he who purports to act for the government stays within the
23 bounds of his authority.

24 The sole issue in this case is whether Kourani's
25 statements made to the government in these meetings in 2017

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1 were voluntary. Statements are voluntary when they are the
2 product of an essentially free and unconstrained choice by
3 their maker. One form of involuntariness is giving a statement
4 when it's coerced. Kourani argues that his statement was
5 involuntary because he was fooled into talking with the
6 government by what he believed was a promise of
7 confidentiality. It is that part that I have to examine.

8 There are certain facts that shout out about this.
9 Kourani was no fool. He is a sophisticated man, college
10 educated, college educated in engineering, and someone who has
11 learned how to conduct himself in interviews. He was fearful
12 that he could not get his kids out of Canada, that his wife
13 might move them to where he could not find them, that he could
14 not get visitation rights for his kids. He was fearful that
15 his family in Lebanon was vulnerable, that they had already
16 been attacked by Hezbollah, and that they could be attacked
17 again.

18 He knew that he was powerless to accomplish what he
19 wanted. He was persona non grata in Canada. Couldn't fly
20 there, couldn't fly to the United States except with
21 difficulty. He couldn't get into the court system in Canada;
22 and if he did, what would he accomplish? So he thought that
23 the only way I can do something is to enlist the FBI to help
24 me.

25 He had experience with the FBI in 2016 where the FBI

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1 was left with an unsatisfied belief that they could not get the
2 information from him that they really needed, that he was
3 holding back. Denbeaux's memorandum, which I will talk about
4 in a minute, reflects that proposition, that there was more
5 that Kourani had than he was giving. The conversations broke
6 off.

7 So Kourani, in order to get the FBI on his side,
8 believing that only they had the power to get his kids into the
9 United States or at least protect them, to get his family into
10 the United States from Lebanon, needed to go to the FBI again.
11 He needed help. He needed a lawyer to help him. He needed a
12 lawyer to set up the meetings. He needed a lawyer the provide
13 cover so that he could go into a confidential area and not be
14 seen going into a government office, and provide a cover of
15 neutrality.

16 He was introduced by a friend in Wisconsin to
17 Professor Denbeaux, whom he had not known before. He acknow-
18 ledged that he knew that Denbeaux did not have immigration
19 experience or knowledge and would not be useful as an
20 immigration lawyer to help Kourani get his family out of
21 Lebanon, that Denbeaux did not know anything about custody or
22 marital disputes and was not going to be able to help him in
23 any normal way of getting his kids out of Canada or even
24 getting visitation rights for himself.

25 He went to Denbeaux because Denbeaux had a background,

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1 a background of dealing with the FBI. He represented people at
2 Guantanamo. He represented the black panthers. He knew how to
3 deal with the government. He was not afraid of the government
4 and he would stand up to the government. At the same time he
5 was a respected professor at Seton Hall University and he had
6 many attributes that could be useful to Mr. Kourani, or so I
7 hold that Mr. Kourani believed.

8 He went to Denbeaux to set up meetings with the FBI so
9 that Kourani could tell them something and get them enlisted to
10 help achieve his goals with his kids and with his family. In
11 that sense Denbeaux's memorandum which we have been talking
12 about, Exhibit 402, is interesting.

13 He writes in paragraph 5, "The dilemma is that the
14 government wants his information before making any commitment,
15 and he wants the protection of the commitment from someone in
16 authority that his family interest would be protected before he
17 provides all of this information," meaning he held information,
18 he was going to give some of that information, but he held back
19 vital parts.

20 Denbeaux goes on, "At the present time he has met
21 once." That's the first meeting in 2017. Denbeaux did not
22 write about or maybe he doesn't even know about the meetings in
23 2016. He continues, "He has made clear from his first
24 utterance the facts that have opened him up as a trustworthy
25 source of information to protect the United States."

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1 Those are lofty goals. Denbeaux is trying to work
2 around the proposition that Kourani is holding back vital
3 information, waiting to exchange that for a firmer under-
4 standing that his family can immigrate here and his kids can at
5 least provide visitation rights.

6 Denbeaux goes on in subparagraph (b), "Our government
7 wants him to break down various walls with important
8 information." Denbeaux writes, "He is willing to do so." But
9 the walls were there because Kourani wanted to effect a trade.
10 In dealing with this, he was dealing with it in a way that held
11 back vital information that was an essential part of his
12 negotiation. He wanted the government to commit itself before
13 he would commit himself, and maybe he wouldn't have to commit
14 himself.

15 Denbeaux writes in paragraph 7, "We need to deal with
16 the perception of the power of the agencies involved. One
17 side," meaning Kourani, "considers the agency to have a great
18 deal of power, and the agency suggests that it has very little
19 power. That's a big problem," he writes.

20 In paragraph 8, "If it's true that our agency cannot
21 help with important considerations because of lack of power or
22 lack of will, the motivation to continue talking fades. And
23 that is even truer if the agency has the power but has not
24 committed to using it."

25 It is clear to me, and I so hold, that Kourani

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1 believed that the FBI had the power to achieve his goals, he
2 was holding back information, made the pretense that he was
3 willing to trade that information. But ultimately he didn't.
4 The agency was not delivering to his satisfaction. The
5 meetings broke down.

6 How to deal with this issue raised by Denbeaux in the
7 first two paragraphs? He said, "This is not a plea negotiation
8 nor is it proffer of any sort." Denbeaux knows what a proffer
9 is. A proffer begins with a lawyer coming in to an Assistant
10 U.S. Attorney and telling the U.S. Attorney what his client
11 will say and wanting to get some kind of immunity in exchange.
12 The government can decide to give immunity based on the proffer
13 of various kinds, immunity of various kinds, or not. But it is
14 not a proffer.

15 He writes in paragraph 2, "Kourani is not seeking any
16 kind of immunity or protection." That's a telling proposition.
17 He is not seeking any kind of immunity or protection,
18 protection meaning against criminal prosecution, because
19 Kourani knows he can't get it. The agents have already made it
20 clear that he can't get it.

21 Then Denbeaux makes this statement. "Because it has
22 already been agreed he has committed no crime and faces no
23 prosecution." How does Denbeaux know that? Nothing in the
24 conversations at the first meeting said that. Denbeaux agreed
25 that the government did not say anything like that. This, he

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1 said, was his belief and his understanding.

2 But it wasn't based on anything. It was an assertion
3 by Denbeaux to give whatever protection he thought could be
4 given because Kourani needed the FBI. He needed the FBI to
5 accomplish his goals of getting his family out of Lebanon and
6 his kids to visit him in the United States. He thought the FBI
7 could do it, so he wanted to enlist the FBI. Denbeaux, a very
8 good lawyer despite his protestations that he missed things and
9 didn't know things, was trying to slip in some kind of false
10 protection for his client.

11 In paragraph 4 he writes, "Candidly, all Kourani wants
12 for his cooperation is protecting his family because," in
13 subparagraph (a), "It is fully recognized that the act of
14 cooperation not only endangers him but also his family."
15 Subparagraph (b), "he wants his mother and father moved to this
16 country."

17 Subparagraph (c), "He wants temporary and immediate
18 assurance that his American-born children currently living in
19 Canada will not be moved to any other country than the United
20 States, and he wants custody of his children in the United
21 States. He may even talk about the witness program."

22 It is Kourani who wanted the FBI to help him. That's
23 what initiated these meetings and that's what makes his
24 statements to the FBI voluntary.

25 We will dress this up with a more formal opinion that

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1 will come. Right now the motion is denied because Kourani's
2 statements to the government were voluntary.

3 There are several other parts of the motion. There is
4 a demand for a bill of particulars and there is a demand for
5 certain information about confidential informants of the
6 government. The latter will be dealt with at the final
7 pretrial conference. Mr. Schacht?

8 MR. SCHACHT: Your Honor, I would just like the record
9 to be complete for any possible future purposes, specifically
10 on the issue of the effective assistance of counsel. In my
11 opinion, I think in Mr. Denbeaux's opinion currently, I'm sure
12 in the prosecutors' opinion, and I hope in your opinion, we can
13 all agree that this was totally, legally ineffective what
14 occurred here. Any competent lawyer would have done exactly
15 what everyone here sort of hinted at, which is to call up an
16 Assistant U.S. Attorney and --

17 THE COURT: Arrange a proffer.

18 MR. SCHACHT: -- arrange a proffer. There is no
19 strategic reason, there is no possible reason other than
20 incompetence and malpractice that a lawyer would choose not to
21 do that.

22 THE COURT: I disagree.

23 MR. SCHACHT: What possible reason?

24 THE COURT: This was a strategy that Kourani agreed on
25 because he wanted the FBI's help. If Denbeaux was going to

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1 make a proffer, he was in effect admitting that his client was
2 ready to be prosecuted. They didn't want to get to that point.

3 MR. SCHACHT: Judge, my client didn't --

4 THE COURT: Let me finish. If Denbeaux recognized
5 that Hezbollah was a terrorist organization and that indeed a
6 crime had been committed earlier, the value that Kourani sought
7 would be eliminated. The only possible way he could use
8 Denbeaux is the way Denbeaux agreed to be used, and that was to
9 give cover to what Kourani was doing because Kourani needed the
10 FBI and saw no resort other than to get the FBI.

11 MR. SCHACHT: Judge, that is not the question. The
12 question is whether the assistance of counsel was effective.

13 THE COURT: It was effective in getting Kourani the
14 meetings he wanted and allowing him to make an effort to get
15 his family back.

16 MR. SCHACHT: He didn't need any lawyer for that.
17 They were chasing him around the world and offering him money
18 in Chicago. He didn't need a lawyer to do that.

19 THE COURT: You will argue that in a 2255.

20 MR. BOVE: I want to register, Judge, that the
21 government agrees with the Court's position.

22 THE COURT: I'm so happy to hear that.

23 MR. BOVE: Mr. Schacht made a representation about
24 what he felt the government's position was, and he was wrong.

25 THE COURT: He is an advocate and you're an advocate.

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1 I have heard enough of that stuff over 19 years.

2 Bill of particulars. I don't think you need it. The
3 complaint is clear. It doesn't need to have particularization.
4 Evidence does not have to be given by the government at this
5 point in time just because that is what you want. The motion
6 in all respects is denied.

7 Where do we go from here, Mr. Bove? Give Mr. Schacht
8 a moment to talk with his client.

9 MR. SCHACHT: Thank you, Judge. I'm ready to go.

10 THE COURT: Are you sure?

11 MR. SCHACHT: Yes, sir.

12 THE COURT: Go ahead.

13 MR. BOVE: The next step in the case, Judge, I
14 anticipate will be motion practice pursuant to the Classified
15 Information Procedures Act. This was something at the
16 beginning of the case at one of the initial conferences we set
17 aside for later.

18 THE COURT: Tell me what you envision.

19 MR. BOVE: I envision at minimum a motion pursuant to
20 section 4 of the Classified Information Procedures Act which we
21 can brief the Court on in camera pursuant to section 2 at a
22 later date when the court information security officer is
23 present.

24 THE COURT: Tell them in summary what the government
25 has?

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1 MR. BOVE: I'm not in a position at this point, Judge,
2 to preview the government's position.

3 THE COURT: I don't want to press you at this point
4 because you are not prepared. So what should be the procedure?
5 Have another meeting? Call a conference?

6 MR. BOVE: I think it makes sense to do as much as we
7 can in open court.

8 THE COURT: The next one should be in open court to
9 establish the procedures that would be followed in camera.

10 MR. BOVE: Yes, Judge. To the extent we can have the
11 security information officer present so we can proceed to,
12 pursuant to section 2, brief it as well, I think that would
13 permit a more fulsome discussion.

14 THE COURT: I have had no experience with the act that
15 you have suggested, but I have had considerable experience with
16 in camera proceedings in the course of the long litigation
17 between the American Civil Liberties Union, the Department of
18 Defense, and the CIA in the context of a Freedom of Information
19 set of demands.

20 My aim in these proceedings is to have as much a
21 public record as is possible without compromising the
22 government's need for secrecy. So we will have a public
23 conference first to set up the procedures that we will follow.
24 Whether the appropriate official of the Department of Justice
25 is here or not doesn't make any difference because it is going

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1 to be followed -- you might as well have him. You're right, he
2 should be here.

3 MR. BOVE: We will certainly notify that person of the
4 date of the next conference.

5 THE COURT: Let's pick a date.

6 MR. BOVE: May I have one moment to confer with Mr.
7 Schacht, Judge?

8 THE COURT: Sure.

9 MR. BOVE: Thank you, Judge. Having consulted with
10 Mr. Schacht, the parties request that this next conference
11 regarding scheduling be set out for approximately one month so
12 that the parties have an opportunity to confer and make
13 efficient use of the Court's time when we next meet.

14 THE COURT: What submissions will you be giving me?

15 MR. BOVE: In advance of the next conference?

16 THE COURT: Yes. I would like to be informed of what
17 the government has in mind and what legal authority it has.

18 MR. BOVE: That is something we contemplated. We can
19 put that in, if it would be acceptable to you, a week prior to
20 the conference.

21 THE COURT: It would.

22 MR. BOVE: Thank you.

23 THE COURT: Mr. Schacht may want to respond, so we
24 need to build in time. I suggest you give yourself the time to
25 submit something to Mr. Schacht, Mr. Schacht will then respond,

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1 and we will have a conference. Work it out.

2 MR. SCHACHT: Judge, I don't think I'm going to need
3 to respond to it. I think he is just going to preview what it
4 is the government wants to do in camera. If I need to respond,
5 I could just do it verbally in court.

6 MR. BOVE: I think, Judge, it will most likely just
7 set out the legal propositions at issue and perhaps even be
8 able to be accomplished jointly.

9 THE COURT: How about a conference on May 1 at 4
10 o'clock?

11 MR. BOVE: Thank you, Judge.

12 MR. SCHACHT: That's fine. Thank you.

13 THE COURT: Do we need to exclude time?

14 MR. BOVE: We do, Judge. The government would move to
15 exclude time until May 1st in order to allow the defendant to
16 continue review discovery, to allow the parties to consult
17 regarding the additional pretrial motions that we have
18 previewed here, and to give an opportunity for the parties to
19 engage in negotiations.

20 THE COURT: Without objection, Mr. Schacht?

21 MR. SCHACHT: No objection.

22 THE COURT: So ordered. Thank you everybody.

23 (Adjourned)
24
25